

STATE OF NEW YORK

5118

2017-2018 Regular Sessions

IN ASSEMBLY

February 6, 2017

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the general municipal law, in relation to determining contractor responsibility on public construction projects

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The state finance law is amended by adding a new section 139-l to read as follows:

§ 139-l. Contractor and subcontractor responsibility. 1. For the purpose of this section, the following terms shall have the following meanings unless otherwise specified:

a. "Apparent low bidder" shall mean a bidder who, upon the opening of bids for a contract, is determined to have submitted the lowest bid for such contract.

b. "Bidder" shall mean any person, partnership, firm, corporation or other entity submitting a competitive bid for, or submitted for approval as a subcontractor on, a contract by any contracting entity.

c. "Contract" shall mean any contract made and awarded for construction, reconstruction or alteration of any public work project which is required by law to be let by competitive bidding to the lowest responsible bidder by a contracting entity.

d. "Contracting entity" shall mean any public department, public benefit corporation or public corporation covered by section one hundred thirty-nine-f of this article or section thirty-eight of the highway law.

e. "Contractor" shall mean a bidder who has been awarded a contract.

f. "Subcontractor" shall mean a person, partnership, firm, corporation or other entity that is proposed to perform work on the contract.

2. In deliberating upon the responsibility of a bidder or proposed subcontractor on a contract, the contracting entity shall give due

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 consideration to any credible evidence or information reasonably deemed
2 to be reliable that the past or current record of a bidder or proposed
3 subcontractor shall warrant a determination that such bidder or subcon-
4 tractor is not a responsible bidder. The contracting entity, in deter-
5 mining the responsibility of the apparent low bidder shall require, and
6 the apparent low bidder shall provide, the following information relat-
7 ing to the apparent low bidder in order for the contracting entity to
8 determine the pecuniary and financial responsibility, accountability,
9 operational responsibility, reliability, skill, capacity, ability, judg-
10 ment and integrity of the apparent low bidder:

11 a. a description of its experience with projects of comparative scope,
12 complexity, and cost within the past five years, together with documen-
13 tary evidence of such projects;

14 b. documentation regarding such projects describing the following:
15 timeliness of performance; quality of work; extension requests; liti-
16 gation and/or arbitration arising from such work, including fines and
17 penalties imposed and payment thereof; liens filed; history of claims
18 for extra work; contract defaults; and an explanation of the same;

19 c. identification and description of any projects within the previous
20 five years that the apparent low bidder was determined by the contract-
21 ing entity not to be a responsible bidder, and the reasons given by such
22 entity therefor, together with an explanation thereof;

23 d. an adequate demonstration of financial responsibility, which may
24 include a certified financial statement prepared by a certified public
25 accountant, to assure that the apparent low bidder possesses adequate
26 resources and availability of credit and the means and ability to
27 procure insurance and bonds required for the project;

28 e. disclosure of any suspensions or revocations of any professional
29 license of any director, officer, owner or managerial employee of the
30 apparent low bidder, to the extent that any work to be performed is
31 within the field of such licensed profession;

32 f. disclosure of any and all United States occupational safety and
33 health administration violations within the previous five years, as well
34 as all notices of such violations against the apparent low bidder in the
35 same five year period, together with a description and explanation of
36 remediation or other steps taken regarding such violations and notices
37 of violations;

38 g. disclosure of any and all violations of article eight of the labor
39 law and any other provision of such law, including but not limited to,
40 child labor violations, failure to pay wages and unemployment insurance
41 tax delinquencies within the past five years;

42 h. disclosure of violations of the workers' compensation law, includ-
43 ing, but not limited to the failure to provide proof of workers' compen-
44 sation or disability coverage and/or any lapses thereof;

45 i. disclosure of any felony convictions, involving the lowest respon-
46 sible bidder, its officers, directors, owners or managerial employees
47 within the past five years; and

48 j. disclosure of any violations within the past five years or pending
49 charges concerning federal, state or municipal environmental and/or
50 health laws, codes, rules and/or regulations.

51 3. When requested by the contracting entity after the bid has been
52 submitted but before any of the subcontracted work commences, the
53 contractor shall identify all work to be subcontracted along with the
54 name of the firm or firms to which the work will be subcontracted. The
55 approval of the subcontractor by the contracting entity, as provided by

1 the contract, shall be subject to the same evaluation of responsibility
2 contained within this section for the contractor.

3 4. Prior to a final determination that the apparent low bidder is not
4 responsible, the contracting entity shall notify the party of such
5 determination, in writing, stating the reasons for such determination,
6 and setting forth a time, date and place for the apparent low bidder to
7 appear and be heard, prior to such determination being made regarding
8 its responsibility. In the event of a final determination that the
9 apparent low bidder is not responsible, the next lowest bidder shall
10 become the apparent low bidder and shall be subject to the requirements
11 set forth in this section.

12 § 2. The general municipal law is amended by adding a new section
13 103-h to read as follows:

14 § 103-h. Contractor and subcontractor responsibility. 1. For the
15 purpose of this section, the following terms shall have the following
16 meanings unless otherwise specified:

17 a. "Apparent low bidder" shall mean a bidder who, upon the opening of
18 bids for a contract, is determined to have submitted the lowest bid for
19 such contract.

20 b. "Bidder" shall mean any person, partnership, firm, corporation or
21 other entity submitting a competitive bid for, or submitted for approval
22 as a subcontractor on, a contract by any contracting entity.

23 c. "Contract" shall mean any contract which is required by law to be
24 let by competitive bid by a contracting entity for construction, recon-
25 struction or alteration of any public work project to the lowest respon-
26 sible bidder.

27 d. "Contracting entity" shall mean a political subdivision or any
28 district therein.

29 2. In deliberating upon the responsibility of a bidder or proposed
30 subcontractor on a contract, the contracting entity shall give due
31 consideration to any credible evidence or information reasonably deemed
32 to be reliable that the past or current record of a bidder or proposed
33 subcontractor shall warrant a determination that such bidder or subcon-
34 tractor is not a responsible bidder. The contracting entity, in deter-
35 mining the responsibility of the apparent low bidder shall require, and
36 the apparent low bidder shall provide, the following information relat-
37 ing to the apparent low bidder in order for the contracting entity to
38 determine the pecuniary and financial responsibility, accountability,
39 operational responsibility, reliability, skill, capacity, ability, judg-
40 ment and integrity of the apparent low bidder:

41 a. a description of its experience with projects of comparative scope,
42 complexity, and cost within the past five years, together with documen-
43 tary evidence of such projects;

44 b. documentation regarding such projects describing the following:
45 timeliness of performance; quality of work; extension requests; liti-
46 gation and/or arbitration arising from such work, including fines and
47 penalties imposed and payment thereof; liens filed; history of claims
48 for extra work; contract defaults; and an explanation of the same;

49 c. identification and description of any projects within the previous
50 five years that the apparent low bidder was determined by the contract-
51 ing entity not to be a responsible bidder, and the reasons given by
52 such entity therefor, together with an explanation thereof;

53 d. an adequate demonstration of financial responsibility, which may
54 include a certified financial statement prepared by a certified public
55 accountant, to assure that the apparent low bidder possesses adequate

1 resources and availability of credit and the means and ability to
2 procure insurance and bonds required for the project;

3 e. disclosure of any suspensions or revocations of any professional
4 license of any director, officer, owner or managerial employee of the
5 apparent low bidder, to the extent that any work to be performed is
6 within the field of such licensed profession;

7 f. disclosure of any and all United States occupational safety and
8 health administration violations within the previous five years, as well
9 as all notices of such violations filed against the apparent low bidder
10 in the same five year period, together with a description and explana-
11 tion of remediation or other steps taken regarding such violations and
12 notices of violations;

13 g. disclosure of any and all violations of article eight of the labor
14 law and any other provision of such law, including but not limited to,
15 child labor violations, failure to pay wages and unemployment insurance
16 tax delinquencies within the past five years;

17 h. disclosure of violations of the workers' compensation law, includ-
18 ing but not limited to, the failure to provide proof of workers' compen-
19 sation or disability coverage and/or any lapses thereof;

20 i. disclosure of any felony convictions of the lowest responsible
21 bidder, its officers, directors, owners or managerial employees within
22 the past five years; and

23 j. disclosure of any violations within the past five years or pending
24 charges concerning federal, state or municipal environmental and/or
25 health laws, codes, rules and/or regulations.

26 3. When requested by the contracting entity after the bid has been
27 submitted but before any of the subcontracted work commences, the
28 contractor shall identify all work to be subcontracted along with the
29 name of the firm or firms to which the work will be subcontracted. The
30 approval of the subcontractor by the contracting entity, as provided by
31 the contract, shall be subject to the same evaluation of responsibility
32 contained within this section for the contractor.

33 4. Prior to a final determination that the apparent low bidder is not
34 responsible, the contracting entity shall notify the party of such
35 determination, in writing, stating the reasons for such determination,
36 and setting forth a time, date and place for the apparent low bidder to
37 appear and be heard, prior to such determination being made regarding
38 its responsibility. In the event of a final determination that the
39 apparent low bidder is not responsible, the next lowest bidder shall
40 become the apparent low bidder and shall be subject to the requirements
41 set forth in this section.

42 § 3. This act shall take effect on the thirtieth day after it shall
43 have become a law and shall be applicable to all contracts advertised
44 for bid on or after such date.